IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.49 of 1997
Date of decision: 02.11.2006

The Commissioner of Income-tax, Amritsar.

-----Applicant

Vs.

M/s Saraswati Sales Corporation, Kotkapura.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Dr. N.L. Sharda, Advocate
for the revenue.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 20.03.1996 in I.T.A. No.8(ASR)/1996 in respect of assessment year 1993-94:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal has been legally correct in law in dismissing the revenue's appeal against the CIT(A)'s order cancelling the penalty of Rs.43350/- which has been levied u/s 271B of the Income-tax Act, 1961 for not filing the Audit Report u/s 44AB alongwith the return of income required to be filed within the stipulated period allowed in sub-section (1) of section 139."

We find that the issue stands covered against the revenue by the judgment of this Court in ***Income-Tax Officer v. Kaysons India*** (2000) 246 ITR 489. After considering the relevant provisions, this Court observed at page 492:-

> "It is, therefore, evident that the default or failure to file the return along with the audit report on or before the specified

date is not hit by the provisions of section 271B. It is not the case of the Revenue that the assessee has failed to get the accounts audited or has failed to obtain the report of such audit in terms of section 44AB before the specified date. It is also evident that no return had been filed either under sub-section (1) of section 139 or in response to any notice under clause (i) of sub-section (1) of section 142 and as such there could possibly be no default of not furnishing the audit report along with such a non-existent return. The return under sub-section (1) of section 139 in this case could be filed up to November 30, 1990. However, the assessee had filed the return on December 31, 1990, which was a return filed under sub-section (4) of section 139 and this return was duly accompanied by the audit report obtained by the assessee in accordance with the provisions of section 44AB. Thus, according to us, the default for which penalty had been levied was not covered by the provisions of section 271B and the Commissioner of Income-tax (Appeals and the Tribunal were justified in holding that no penalty was leviable."

Accordingly, the question is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 02, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**